

ORDINANCE NO. 2012-20

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AMENDING CHAPTER 7 OF THE CITY CODE TO ADD ARTICLE V FLORIDA FRIENDLY FERTILIZER USE; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR TIMING OF FERTILIZER APPLICATIONS; PROVIDING FOR FERTILIZER FREE ZONES; PROVIDING FOR FERTILIZER CONTENT AND APPLICATION RATES; PROVIDING FOR FERTILIZER APPLICATION PRACTICES; PROVIDING FOR MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRAINING; PROVIDING FOR LICENSING OF COMMERCIAL APPLICATORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS; pursuant to section 303(d) of the Federal Clean Water Act and the resulting Florida Impaired Waters Rule (Chapter 62-303, Florida Administrative Code), the Florida Department of Environmental Protection (FDEP) has classified specific water bodies in Palm Beach County as “impaired” as a result of the presence of excessive nutrients; and

WHEREAS; Florida Statue, Section 403.9337 requires local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to § 403-067, to adopt an ordinance for Florida-Friendly™ fertilizer use on urban landscapes; and

WHEREAS; the FDEP on the 2nd day of March 2011, issued its Palm Beach County Municipal Separate Storm Sewer System Permit No. FLS 000018-003 (hereinafter referred to as the “MS4 Permit”) to forty-one (41) governmental entities including the City of Greenacres; and

WHEREAS; the MS4 permit requires local governments within the watershed of an impaired water body to adopt FDEP’s Model Ordinance for Florida Friendly Fertilizer Use

on Urban Landscapes or an Ordinance that includes all the requirements set forth in the Model Ordinance; and

WHEREAS; surface water runoff and base flow runoff leaves residential neighborhoods, commercial centers, industrial areas, and other lands of Palm Beach County and enters into natural and artificial stormwater and drainage conveyances and natural water bodies in Palm Beach County; and

WHEREAS; phosphorus and nitrogen, the primary nutrients associated with the degradation of surface water, are commonly the primary components of fertilizer for turf and landscape application; and

WHEREAS; the quality of streams, lakes, and wetlands is important to environmental, economic, and recreational prosperity and to the health, safety, and welfare of the residents of Greenacres; and

WHEREAS; algae blooms and accelerated growth of aquatic weeds in Palm Beach County's water bodies have heightened community concerns about water quality and eutrophication of surrounding waters; and

WHEREAS; it is generally recognized that Eastern Palm Beach County soils naturally have adequate phosphorus content for most vegetative needs and that additional phosphorus is therefore only occasionally needed to create or maintain a vibrant landscape; and

WHEREAS; it has been recognized that proper application of slow-release nitrogen sources is more efficiently used by plants and less likely to leach or runoff; and

WHEREAS; this Ordinance is part of a regulatory program to address nonpoint sources of nutrient pollution which is scientifically based, and economically and technically feasible; and

WHEREAS; as a result of the Florida Department of Environmental Protection's determination that certain water bodies within Palm Beach County are impaired by excessive nutrient levels, the City Council of Greenacres finds that the best management practices contained in the most recent edition of the *"Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries"*, are necessary to protect the health, safety and welfare of the residents of Greenacres.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREENACRES, FLORIDA, AS FOLLOWS:

Section 1. Chapter 7 Health, Sanitation and Nuisances of the Code of Ordinances of the City of Greenacres is hereby amended to adopt a new Article V entitled "Florida Friendly Fertilizer Use" as follows:

Secs. 7-107 – 7-149 Reserved.

ARTICLE V. FLORIDA FRIENDLY FERTILIZER USE

Sec. 7-150 Purpose and Intent.

This Article requires the use of Best Management Practices for the application of fertilizer to minimize negative environmental effects associated with excessive nutrients in water bodies. These environmental effects have been observed in and on Palm Beach County's natural and constructed stormwater conveyances, canals, lakes, estuaries and other water bodies. Collectively, these water bodies are an asset important to the environmental, recreational, cultural and economic well-being of Greenacres' residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, is anticipated to help improve and maintain water and habitat quality.

Sec. 7-151 Definitions.

For this Ordinance, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

"Application" or "Apply" means the actual physical deposition of fertilizer to turf or landscape plants.

"Applicator" means any person who applies fertilizer on turf and/or landscape plants.

"Approved Test" means a soil test from the University of Florida, government, or other commercial licensed laboratory that regularly performs soil testing and recommendations.

"Best Management Practices (BMP's)" means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most

effective and practical site-specific means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

"Code Enforcement Officer", "Official", or "Inspector" means any designated employee or agent of Greenacres whose duty is to enforce codes and ordinances enacted by Greenacres.

"Commercial Applicator" except as provided in section 482.1562(9), F.S., means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicators.

"Fertilizing" or "Fertilization" means the act of applying fertilizer to turf, specialized turf, or landscape plants.

"Fertilizer" means any substance or mixture of substances that contains one or more recognized plant nutrients and which promotes plant growth, controls soil acidity or alkalinity, provides other soil enrichment, or provides other corrective measures to the soil.

"Institutional Applicator" means any person, other than a private person applying fertilizer on their own residential property or a Commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners, managers, or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

"Landscape Plant" means any native or non-native tree, shrub, or groundcover (excluding turf).

"Pasture" means land managed for livestock grazing.

"Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

"Prohibited Application Period" means the time period during which application of fertilizer is prohibited due to the potential to negatively impact the environment.

"Saturated Soil" means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this Article, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.

"Slow-Release" means nitrogen in a form which delays its availability for vegetative uptake and use after application, or which extends its availability to the vegetation longer than a reference rapid or quick release product. It includes the terms "Controlled Release", "Timed Release", "Slowly Available" and "Water Insoluble Nitrogen".

"Turf" means an area of grass-covered soil held together by the roots of the grass and includes the terms "Sod" and "Lawn".

"Urban Landscape" means pervious areas on residential, commercial, industrial, institutional, road rights-of-way, or other nonagricultural lands that are planted with turf or landscape plants. For the purposes of this section, agriculture has the same meaning as provided in section 570.02, Florida Statutes.

Sec. 7-152 Applicability.

This Article shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer to urban landscapes within the city boundary, unless such application is specifically exempted by Sec. 7-158 of this Article.

Sec. 7-153 Timing of Fertilizer Applications.

- (1) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the time period in which a Flood Watch or Warning, a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of Greenacres, issued by the National Weather Service.
- (2) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants if heavy rain [2 inches or more within a twenty-four (24) hour period] is likely.
- (3) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to saturated soils.
- (4) Fertilizer containing nitrogen and/or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first thirty (30) days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc), or in accordance with the Stormwater Pollution Prevention Plan for the site.

Sec. 7-154 Fertilizer Free Zones.

Fertilizer shall not be applied within ten (10) feet of any pond, stream, water body, lake, canal, or wetland as defined by the Florida Department of Environmental Protection in Chapter 62-340, Florida Administrative Code or from the top of a seawall or lake bulkhead. Newly planted turf or landscape plants may be fertilized in this zone only for a sixty (60) day period beginning no sooner thirty (30) days after planting if needed to allow the vegetation to become well established. Caution shall be used to prevent direct deposition of fertilizer into the water.

Sec. 7-155 Fertilizer Content and Application Rates.

- (1) Fertilizers applied to turf shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*. Under Rule 5E-1.003(2), Florida Administrative Code, required application rate and frequency maximums, which vary by plant and turf types, are found on the labeled fertilizer bag or container.
- (2) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in section (1) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.
- (3) Fertilizer used for sports turf at golf courses shall be applied in accordance with the recommendations in "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses", published by the Florida Department of Environmental Protection, dated January 2007, as may be amended. Fertilizer used at park or athletic fields shall be applied in accordance with Rule 5E-1.003(2), Florida Administrative Code.

Sec. 7-156 Fertilizer Application Practices.

- (1) Spreader deflector shields shall be used when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including

- wetlands. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
- (2) Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
 - (3) In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.
 - (4) Property owners and managers are encouraged to use an Integrated Pest Management (IPM) strategy as currently recommended by the University of Florida Cooperative Extension Service publications.

Sec. 7-157 Management of Grass Clippings and Vegetative Matter.

In no case shall grass clippings, vegetative material, and/or vegetative debris intentionally be washed, swept, or blown on to or into storm-water drains, ditches, conveyances, water bodies, wetlands, sidewalks or roadways. Any material that is accidently so deposited shall be immediately removed to the maximum extent practicable.

Sec. 7-158 Exemptions.

The provisions set forth above in this Article shall not apply to:

- (1) bona fide farm operations as defined in the Florida Right-to-Farm Act, Section 823.14, Florida Statutes.
- (2) other properties not subject to or covered under the Florida Right-to-Farm Act that have pastures used for grazing livestock.
- (3) any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban storm-water, water quality, agronomics, or horticulture.

Sec. 7-159 Training.

- (1) All commercial and institutional applicators of fertilizer shall abide by and successfully complete the six-hour training program in the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" offered by the Florida Department of Environmental Protection through the University of Florida/Palm Beach County Cooperative Extension Service "Florida-Friendly Landscapes" program or an approved equivalent program.
- (2) Non-commercial and non-institutional applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida/IFAS "Florida-Friendly Landscape Program" and label instructions when applying fertilizers.

Sec. 7-160 Licensing of Commercial Applicators.

- (1) All businesses applying fertilizer to turf or landscape plants (including, but not limited to, residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that the business owner or his/her designee and at least (1) employee holds the appropriate "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" training certificate

prior to the business owner obtaining a City Business Tax Receipt. Standard Business Tax Receipt (BTR) and transaction fees shall apply. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the City of Greenacres. It is the responsibility of the business owner to maintain the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries" certificate to receive their Business Tax Receipt annually.

- (2) After December 31, 2013, all commercial applicators of fertilizer within City of Greenacres, shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per Rule 5E-14.117(18), Florida Administrative Code.

Sec. 7-161 Enforcement.

Any owner, owner's representative, tenant or person violating the provisions of this Article shall be subject to enforcement as provided in sections 2-72 and 2-72.1 of the City of Greenacres Code of Ordinances. The Building Official or his designee may pursue these or any other enforcement remedies available to and applicable to the City of Greenacres in order to carry out this Article.

Sec. 7-162 Penalties.

Failure to comply with the requirements of this Article shall be punishable by a fine not to exceed \$250 per day for the violation or a fine not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs and remediation including administrative costs. If the Code Enforcement Board finds the violation is irreparable or irreversible in nature, a fine not to exceed \$5,000 per violation may be imposed.

Section 2. Repeal of Conflicting Ordinances.

All Ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 3. Severability.

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings of invalidity shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof

shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

Section 4. Inclusion in Code.

It is the intention of the City Council, entered as hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of the City of Greenacres, Florida; that the Section(s) of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word "ordinance" may be changed to "Section", "Article" or another word.

Section 5. Effective Date.

Provisions of this Ordinance shall become effective five (5) days after it is adopted

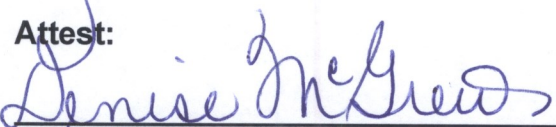
Passed on the first reading this 19th day of November, 2012.

PASSED AND ADOPTED on the second reading this 3rd day of December, 2012.



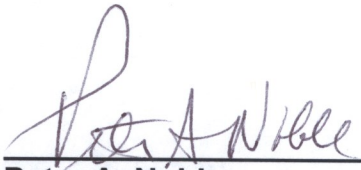
Samuel J. Ferreri
Mayor

Attest:



Denise McGrew
City Clerk

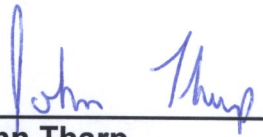




Peter A. Noble
Deputy Mayor

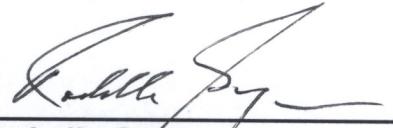
Voted

(Yes)




John Tharp
Councilman, District I

(Yes)



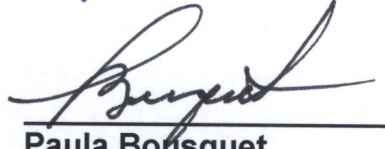
Rochelle Gaenger
Councilwoman, District III

(Yes)



Jonathan G. Pearce
Councilman, District IV

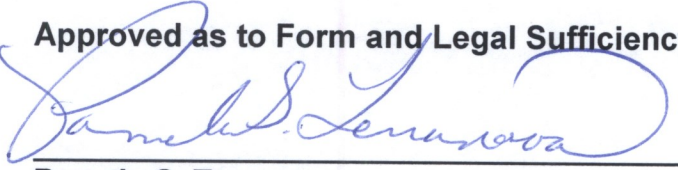
(Yes)



Paula Bousquet
Councilwoman, District V

(Yes)

Approved as to Form and Legal Sufficiency:



Pamela S. Terranova
City Attorney